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9 UNITED STATES BANKRUPTCY COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SANTA ROSA DIVISION

12 In re:

13 KINGSBOROUGH ATLAS TREE  
14 SURGERY, INC.

15 Debtor.

Case No.: 25-10088 (WJL)

Chapter 11

**CREDITOR EVEREST REINSURANCE  
COMPANY'S LIMITED OBJECTION AND  
RESERVATION OF RIGHTS  
REGARDING APPROVAL OF  
DISCLOSURE STATEMENT**

**Hearing Information**

Date: August 5, 2025

Time: 9:30 a.m.

Location: 1300 Clay St., Courtroom 220  
Oakland, California

19  
20 Creditor Everest Reinsurance Company ("Everest"), by and through its undersigned  
21 counsel, hereby files this Limited Objection to and Reservation of Rights regarding the Disclosure  
22 Statement in Support of Debtor's Plan of Reorganization [Docket No. 160] (the "Disclosure  
23 Statement") describing the Debtor's Plan of Reorganization [Docket No. 161] (the "Plan"), and  
24 respectfully states as follows:

25 **INTRODUCTION**

26 Everest executed surety bonds on behalf of the Debtor in the total penal sum of  
27 \$24,037,962.25 in exchange for the Debtor's execution of an Agreement of Indemnity ("Indemnity  
28 Agreement"). As consideration for and to induce Everest to execute the bonds, the Debtor agreed

1 to exonerate, indemnify, and hold harmless Everest from and against all liabilities, losses, costs,  
2 damages, and expenses, including, but not limited to attorneys' fees, incurred by Everest by reason  
3 of Everest's having executed any surety bond for the Debtor, as well as any expenses incurred by  
4 Everest in enforcing its rights under the Indemnity Agreement. Pursuant to the Indemnity  
5 Agreement, the Debtor assigned as collateral to Everest all of its rights, title and interest in and  
6 growing out of the Debtor's property identified in paragraph 3 of the Indemnity Agreement and  
7 the proceeds thereof (the "Collateral"). Paragraph 5 of the Indemnity Agreement provides that the  
8 Indemnity Agreement is a security agreement to Everest and a financing statement covering the  
9 Collateral.

10 Everest perfected its security interest in the Debtor's property by filing a UCC-1 Financing  
11 Statement on January 30, 2025.

12 Despite a pre-petition demand, the Debtor failed and refused to post collateral with Everest.  
13 Everest has incurred losses and remains further exposed to potential losses up to the penal limit of  
14 the bonds.

15 Everest filed a timely bankruptcy claim as Claim No. 66 on June 26, 2025 in the amount  
16 of \$24,037,962.25 secured by a lien on the collateral described in the indemnity agreement as  
17 perfected by the UCC-1 financing statement, which were attached to the proof of claim. The  
18 deadline to file claims was June 30, 2025.

19 On June 18, 2025, before the last day to file claims, the Debtor filed a disclosure statement  
20 (Docket #160) and a Proposed Plan of Reorganization (Docket #161). The Disclosure Statement  
21 sets up classes of claims based on the claims by specific creditors, but there is no class of claims  
22 for creditors such as Everest that filed a timely claim after June 18, 2025. Moreover, the Disclosure  
23 Statement does not address the assets that are the security for Everest's claim under the indemnity  
24 agreement and UCC-1.

### 25 **LIMITED OBJECTION**

26 1. Everest objects to the Disclosure Statement because it is silent regarding the  
27 Debtor's treatment of Everest's secured claim, as asserted on the Debtor's Claims Register, nor  
28 does the Disclosure Statement offer any discussion concerning that omission. The Plan and

1 Disclosure Statement provide that “[t]he undisputed [secured] claims of Classes 1 – 10 will be paid  
2 in full” upon the planned sale of the Debtor’s equipment, but Everest is excluded from  
3 classification and treatment as a secured creditor. *See* Claim No. 66. Everest’s claim correlates to  
4 its UCC filing, which is publicly accessible through a UCC search on the California Secretary of  
5 State website. The Plan and Disclosure Statement also omit reference to other timely filed claims,  
6 and should be amended to address those claims.

7         2.       The Disclosure Statement does not provide “adequate information” as required by  
8 11 U.S.C. § 1125 for Everest to consider and evaluate the Plan. Specifically, the Disclosure  
9 Statement does not include any information, let alone “adequate information”, with respect to the  
10 Bonds, the Indemnity Agreement, or how the Debtor’s ongoing obligations under the Indemnity  
11 Agreement will be treated. The Disclosure Statement does not provide adequate information as to  
12 how the Debtor intends to address its financial and contractual obligations to Everest in the interim  
13 period post-Confirmation and pre-Effective Date. To the extent the Indemnity Agreement is  
14 presumed to “pass through” bankruptcy in full force and effect, unmodified and unimpaired by the  
15 Plan, it is unclear what priority Everest’s claim will have. It appears, instead, that the assets  
16 securing Everest’s claim are to be auctioned with no provision for the proceeds of the auction to  
17 be paid to Everest. The Debtor appears to be liquidating, not reorganizing, leaving no provision  
18 for a passthrough claim to be recovered after the bankruptcy.

### 19                                 **RESERVATION OF RIGHTS**

20         3.       Everest does not waive any, and expressly reserves all, of its rights, defenses,  
21 limitations and/or claims under its Bonds, Indemnity Agreement, applicable law or otherwise.  
22 Further, Everest reserves all of its rights to raise the issues contained in this Objection and any other  
23 related issues in any contested matter and/or adversary proceeding including, without limitation,  
24 objections to confirmation of the Plan. Everest reserves its rights to amend, modify or supplement  
25 this Objection in response to, or as a result of, any discovery being conducted in connection with  
26 confirmation of the Plan and/or other submission in connection with the Plan or this bankruptcy  
27 case filed by any other party in interest. Finally, Everest reserves its right to adopt any other  
28 objections to approval of the Disclosure Statement filed by any other party in interest.

4. Everest requests that it be permitted to reserve the right to supplement this Limited Objection at a or prior to the hearing or continued hearing on the Disclosure Statement, and at any other appropriate subsequent time.

## CONCLUSION

5. Everest respectfully submits that the Disclosure Statement fails to provide adequate information about material aspects of the Plan and fails to disclose material risk factors associated with the Plan concerning the treatment of Everest's Bonds, Indemnity Agreement, and the Debtor's obligations related thereto. As a result, the Disclosure Statement does not satisfy the minimum standards required by section 1125 of the Bankruptcy Code, and should not be approved in its current form unless modified to address the concerns expressed in this Objection.

For the foregoing reasons, Everest respectfully requests that the Court enter an order (i) disapproving the Disclosure Statement; and (ii) granting Everest such other and further relief as is just and appropriate under the circumstances.

Dated: July 31, 2025

**SMTD LAW LLP**

By: /s/ Teresa L. Polk  
Teresa L. Polk  
Attorney for Creditor  
EVEREST REINSURANCE COMPANY

1 PROOF OF SERVICE OF DOCUMENT

2 I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My  
3 business address is 17901 Von Karman Avenue, Suite 500, Irvine, California 92614.

4 A true and correct copy of the foregoing documents entitled CREDITOR EVEREST  
5 REINSURANCE COMPANY'S LIMITED OBJECTION AND RESERVATION OF RIGHTS  
6 REGARDING APPROVAL OF DISCLOSURE STATEMENT will be served or was served (a)  
7 on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the  
8 manner stated below:

9 1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):  
10 Pursuant to controlling General Orders and LBR, the foregoing document will be served by the  
11 court via NEF and hyperlink to the document. On July 31, 2025, I checked the CM/ECF docket  
12 for this bankruptcy case or adversary proceeding and determined that the following persons are  
13 on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated  
14 below:

- 15 • Jamie P. Dreher jdreher@downeybrand.com
- 16 • Michael C. Fallon fallonmc@fallonlaw.net, manders@fallonlaw.net
- Michael C. Fallon mcfallon@fallonlaw.net, manders@fallonlaw.net
- Alan W Forsley alan.forsley@flpllp.com
- Gabriel P Herrera gherrera@kmtg.com, bxiong@kmtg.com
- Paul Gregory Leahy Paul.Leahy@usdoj.gov
- Matthew P. Minser mminser@sjlawcorp.com
- Office of the U.S. Trustee / SR USTPRegion17.SF.ECF@usdoj.gov
- Jack Praetzellis jpraetzellis@foxrothschild.com, jack-praetzellis-  
1683@ecf.pacerpro.com
- Michael A. Sweet msweet@foxrothschild.com, michael-sweet-6337@ecf.pacerpro.com
- Philip J. Terry pjterry@cmprlaw.com, dhayes@cmprlaw.com
- Jennifer C. Wong bknotice@mccarthyholthus.com, jwong@ecf.courtdrive.com

17 2. SERVED BY UNITED STATES MAIL: On N/A, I served the following persons and/or  
18 entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a  
19 true and correct copy thereof in a sealed envelope in the United States mail, first class, postage  
20 prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to  
21 the judge will be completed no later than 24 hours after the document is filed.

22 3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE  
23 TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to  
24 F.R.Civ.P. 5 and/or controlling LBR, on N/A, I served the following persons and/or entities by  
25 personal delivery, overnight mail service, or (for those who consented in writing to such service  
26 method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a  
27 declaration that personal delivery on, or overnight mail to, the judge will be completed no later  
28 than 24 hours after the document is filed.

I declare under penalty of perjury under the laws of the United States that the foregoing is true  
and correct.

July 31, 2025

Date

Teresa L. Polk

Printed Name

/s/ Teresa L. Polk

Signature